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DOCKET NO. 49849

JOINT REPORT AND APPLICATION	§	PUBLIC UTILITY COMMISSION
OF EL PASO ELECTRIC COMPANY,	§	
SUN JUPITER HOLDINGS LLC, AND	§	OF TEXAS
IIF US HOLDING 2 LP FOR	§	
REGULATORY APPROVALS UNDER	§	
PURA §§ 14.101, 39.262, AND 39.915	§	

STIPULATION

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

As of December 17, 2019, El Paso Electric Company (“EPE”), Sun Jupiter Holdings LLC (“Sun Jupiter”), and IIF US Holding 2 LP (“IIF US 2”) (collectively, “Joint Applicants”) and most parties to this docket have reached a settlement concerning the *Joint Report and Application of El Paso Electric Company, Sun Jupiter Holdings LLC, and IIF US Holding 2 LP for Regulatory Approvals under PURA §§ 14.101, 39.262, and 39.915* (the “Joint Report and Application”) filed in this proceeding. Based upon that settlement, the following parties joined in this stipulation (“Stipulation”) regarding all issues in this docket: Joint Applicants; Staff of Public Utility Commission of Texas (“Commission Staff”); Office of Public Utility Counsel (“OPUC”); City of El Paso (“CEP”); Texas Industrial Energy Consumers (“TIEC”); Freeport-McMoRan, Inc.; International Brotherhood of Electrical Workers Local 960 (“IBEW”); Vinton Steel, LLC; and United States Department of Defense & all other Federal Executive Agencies.¹ The Signatories agree that a negotiated resolution of this proceeding on the basis set forth in this Stipulation is in the public interest, will conserve the parties’ and the public’s resources, and eliminate controversy. Accordingly, the Signatories request approval of this Stipulation by the Commission and entry of an order (including findings of fact and conclusions of law) as set out in Attachment A hereto (“Proposed Order”).

¹ The only parties to this proceeding that are not Signatories are the Rate 41 Group (“Rate 41”) and Dr. Richard C. Bonart. Accordingly, it is the Signatories’ understanding that the only issues for which the January 7–8, 2020 hearing is required are the issues addressed in Rate 41 witness James W. Daniel’s direct testimony and Dr. Bonart’s direct testimony.

I.

This Stipulation has been drafted by all Signatories and is the result of negotiation, compromise, settlement, and accommodation. The Signatories agree that the terms and conditions are interdependent. If the Commission does not accept this Stipulation as presented, or issues an order inconsistent with the terms of this Stipulation or the Proposed Order, the Signatories agree that any Signatory adversely affected by the alteration has the right to withdraw from this Stipulation in the manner and within the time period prescribed herein, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under the law.

This Stipulation is binding on each of the Signatories only for the purpose of resolving the issues as set forth herein and for no other purpose.

By this Stipulation, the Signatories resolve all issues among them related to this proceeding and hereby stipulate and agree as follows and request that the Commission enter the Proposed Order attached hereto as Attachment A that reflects the following:

A. **Transaction:**

1. In the Joint Report and Application filed in this docket, Joint Applicants seek Commission approval of a transaction through which, in accordance with the Agreement and Plan of Merger (“Merger Agreement”) attached as Exhibit A to the Joint Report and Application, Sun Jupiter’s wholly-owned subsidiary, Sun Merger Sub Inc. (“Merger Sub”), will merge with and into EPE, with EPE continuing as the surviving corporation (the “Transaction”). IIF US 2 will provide Sun Jupiter the equity necessary to complete the acquisition of EPE. As a result of the Transaction, EPE will become a direct, wholly-owned subsidiary of Sun Jupiter and an indirect, wholly owned subsidiary of IIF US 2. Shares held by EPE’s current public shareholders immediately before the Transaction’s effective time will be cancelled and converted into the right to receive \$68.25 in cash per share without interest, and shares of EPE’s common stock will be delisted from the New York Stock Exchange (“NYSE”). The per-share purchase price of \$68.25 in cash represents an enterprise value of approximately \$4.3 billion, including EPE’s net debt, and is a 17% premium to EPE’s unaffected closing price on May 31, 2019, the last trading day before the

announcement of the Merger Agreement. Immediately following the Transaction, Sun Jupiter will own all the equity in EPE.

2. The Signatories agree that, based on the requirements of this Stipulation, the Transaction is in the public interest in accordance with PURA §§ 39.262(l)–(m) and 39.915. The Signatories specifically agree that the Transaction will not adversely affect EPE’s reliability of service, availability of service, or cost of service.
3. The Signatories also agree that, based on the requirements of this Stipulation, the Transaction is in the public interest in accordance with PURA § 14.101. The Signatories specifically agree that the Transaction will not (a) result in the transfer of jobs to workers outside of Texas, (b) adversely affect the health or safety of EPE’s customers or employees, or (c) result in a decline in service. The Signatories also agree that the Transaction will result in no EPE property or other assets being sold, transferred, or otherwise affected.

B. Agreed Regulatory Commitments:

The Signatories agree to the following Regulatory Commitments:

Duration of Commitments

1. Except to the extent that any of the following conditions explicitly state otherwise, the following commitments will apply as of closing of the Transaction and continue to apply thereafter, unless and until altered by the Commission.

Governance Limits and Documentation

2. A Delegation of Authority declaring the duties of the EPE Board of Directors and Sun Jupiter shall be adopted as soon as practicable after the closing of the Transaction in a form substantially similar to the Delegation of Authority attached hereto as Attachment

- B. The Delegation of Authority shall bind Sun Jupiter and EPE and shall be filed with the Commission.
3. The Delegation of Authority will establish that the sole authorized purpose of EPE is the provision of retail and wholesale electric utility service and the performance of activities reasonably necessary and appropriate to exercise utility service provision.
 4. The Delegation of Authority will establish that the sole authorized purpose of Sun Jupiter, the direct shareholder of EPE, is the ownership of EPE and the performance of activities reasonably necessary and appropriate to exercise such ownership.
 5. The EPE Board of Directors shall consider, subject to applicable Texas law, the best interests of EPE, consistent with the Commission approved ring fence.
 6. The Delegation of Authority will require that any amendment thereto that concerns the conditions set forth therein or in these Regulatory Commitments will require the prior approval of the Commission.
 7. No more than thirty (30) days after the closing of the Transaction, EPE will amend its corporate bylaws to incorporate the provisions of the Delegation of Authority (including these Regulatory Commitments). To the extent thereafter that any changes are sought to amend EPE's bylaws that impact the terms of the Delegation of Authority or these Regulatory Commitments, such changes shall be approved by the Commission before the effectiveness of such changes.
 8. No more than thirty (30) days after the closing of the Transaction, Sun Jupiter will incorporate the provisions of the Delegation of Authority (including these Regulatory Commitments) into its Limited Liability Company Agreement ("LLC Agreement"). To the extent thereafter that any changes are sought to amend the LLC Agreement that impact the terms of the Delegation of Authority or these Regulatory Commitments,

such changes shall be approved by the Commission before the effectiveness of such changes.

9. The LLC Agreement will include a provision that Sun Jupiter has a duty to act, subject to applicable Delaware law, in the best interests of EPE consistent with the Commission approved ring fence.

Economic Development and Community Commitments

10. Economic Development Fund. Joint Applicants will dedicate \$100 million to promote economic development in the EPE service territory, including the City of El Paso, Texas and the City of Las Cruces, New Mexico. Of that amount, \$80,000,000 will be jurisdictionally allocated to EPE's Texas service territory over a period of fifteen (15) years. The \$80,000,000 allocated to Texas will be administered by the City of El Paso's Economic Development Department and will be funded by Sun Jupiter in fifteen (15) equal annual installments of \$5,333,333.33. The first installment will be made by December 15, 2020, with each successive installment due by December 15 or the following business day of the applicable year. Contributions to the fund will not be recoverable in EPE's rates.
11. Charitable Giving. Joint Applicants will maintain EPE's annual amount of charitable giving following the closing of the Transaction at EPE's average annual charitable giving level for the three-year period ending December 31, 2018 (i.e., approximately \$1.2 million per year throughout EPE's service territory). This commitment will remain regardless of the level allowed in EPE's rates. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
12. Low-Income Assistance Programs. Joint Applicants will maintain EPE's existing low-income assistance programs while evaluating potential methods to improve such programs.
13. Entry-Level Training Programs. Joint Applicants will create or enhance programs that provide entry-level training focused on engineering, management, and finance skills for the local labor force in collaboration with The University of Texas at El Paso, El Paso Community College, and New Mexico State University. This commitment will

- remain regardless of the level allowed in EPE's rates. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
14. Apprenticeship Programs. Joint Applicants will create or enhance apprenticeship programs for technical and professional positions for students in local high schools and colleges. This commitment will remain regardless of the level allowed in EPE's rates. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
15. Supplier Diversity. Joint Applicants will continue and enhance utility supplier diversity by promoting the inclusion of minority-, women-, LGBTQ-, and veteran-owned businesses into EPE's supply chain. This commitment will remain regardless of the level allowed in EPE's rates. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.
16. New Technology Programs. Joint Applicants will study and evaluate growth opportunities related to electric vehicles, distributed generation, and battery storage in collaboration with The University of Texas at El Paso, El Paso Community College, and New Mexico State University. All Signatories reserve the right to challenge inclusion of these expenses in rates. To the extent EPE seeks to recover these costs in rates, the inclusion of such costs shall be described in the executive summary of the rate filing package.

Rate and Capital Expenditure Commitments

17. Rate Credit. EPE will issue a rate credit to its Texas customers in a total aggregate amount for all customers of \$21 million. The rate credit will be distributed among customers in 36 monthly installments. No later than 45 days after the closing of the

Transaction, EPE will make a tariff filing to implement the rate credit. EPE will not attempt to recover the value of this rate credit in future rate cases.

18. Goodwill. Joint Applicants will not seek recovery in rates of the Transaction acquisition premium. Any goodwill associated with the Transaction will not be included in rate base, cost of capital, or operating expenses in future EPE ratemaking proceedings. Write-downs or write-offs of goodwill will not be included in the calculation of net income for dividend or other distribution payments purposes.
19. Pushdown Accounting. Neither IIF US 2 nor any of its affiliates will elect to apply pushdown accounting for the Transaction (i.e., the Transaction will have no impact on EPE's assets being acquired). Any incremental goodwill will not be allocated to, or recognized within, EPE's balance sheet.
20. Transaction Costs. Joint Applicants will not seek recovery of Transaction costs in EPE's rates. None of the Transaction costs will be borne by EPE's customers, nor will EPE seek to include Transaction costs in its rates. Transaction costs are those incremental costs paid to advance or consummate the Transaction. Examples of Transaction costs include, but are not limited to: IIF US 2 time and expenses; EPE change-of-control payments; any tax impact as a result of the Transaction; certain executive severance costs related to the Transaction; and third-party costs, including bank advisors, external legal advisors, rating agencies, and expert witnesses and consultants in each case paid to advance or consummate the Transaction. Transaction costs do not include EPE employee time.
21. Capital Expenditures. EPE will continue to make minimum capital expenditures in an amount equal to EPE's current five-year budget for the five-year period beginning January 1, 2021, subject to the following adjustments, which shall be reported to the Commission in EPE's earnings monitoring report: EPE may reduce capital spending due to conditions not under EPE's control, including, without limitation, siting delays, cancellations of projects by third-parties, weaker than expected economic conditions, or if EPE determines that a particular expenditure would not be prudent.
22. Transition Costs. No IIF US 2 time and expenses, third party costs, fees, expenses, or costs of the transition ("transition costs") will be borne by EPE's customers, nor will EPE seek to include transition costs in its rates. Transition costs are those costs

necessary to integrate EPE into the holdings of IIF US 2, whether incurred before or after the closing of the Transaction, including the one-time transition costs being incurred whether directly or indirectly through affiliate charges to transition EPE to ownership by IIF US 2 and to integrate EPE's operations and systems with those of IIF US 2. Provided, however, that transition costs do not include EPE employee time, "costs to achieve" savings or synergies or costs that reflect reasonable and necessary costs in providing service to the public. "Costs to achieve" reflect reasonable and necessary amounts incurred to realize operating enhancements, efficiency gains, or costs reduction initiatives.

23. Electric Furnace Rate. EPE will not propose to eliminate the Electric Furnace Rate in its next base rate case following Commission approval of the Transaction.
24. EADIT. EPE commits that it will not amortize or reduce the regulatory liabilities for excess accumulated deferred income taxes recorded as a result of the federal legislation commonly referred to as the Tax Cuts and Jobs Act of 2017 until the amortization is reflected in rates, and EPE agrees that the determination of the treatment of this amount will be addressed in the next base rate case for EPE.

Ring-Fencing Commitments

25. Name/Logo. EPE will maintain an existence that is separate and distinct from Sun Jupiter, IIF US 2, and any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), including, its separate name, logo, franchises, obligations, and privileges.
26. EPE Credit Ratings. EPE and IIF US 2 shall take the actions necessary to ensure the existence of EPE's stand-alone credit and debt ratings, as applicable. EPE will, except as otherwise approved by the Commission, be registered with a least two major nationally and internationally recognized credit rating agencies. EPE, Sun Jupiter, and IIF US 2 will take efforts to ensure that EPE's credit ratings reflect the ring-fence provisions contemplated herein such that the credit rating agencies provide EPE with a stand-alone credit rating.
27. Credit Ratings and Dividends. In considering subclauses (a)–(b) below, the Disinterested Directors (as defined below) on the EPE Board of Directors shall have the ability to prevent EPE from making any dividends or other distributions, other than

contractual tax payments, if they determine in good faith that it is in the best interests of EPE to retain such amounts to meet the expected future requirements of EPE (including compliance with the below debt-to-equity commitment) as follows:

- a. For so long as EPE's credit rating remains at BBB (Baa2) at two of the major credit rating agencies (Moody's, S&P, and Fitch), no dividend shall be paid by EPE, except for contractual tax payments, unless such dividend is approved by a majority vote of the EPE Board of Directors, including at least two Disinterested Directors.
- b. If EPE's credit rating falls to BBB- (Baa3) at one of the major credit rating agencies, no dividend shall be paid by EPE, except for contractual tax payments, unless approved by a majority vote of the EPE Board of Directors, including all four Disinterested Directors, until EPE's credit rating at two of the major credit rating agencies returns to BBB (Baa2), at which point the above provisions of subclause (a) apply.
- c. If EPE's credit ratings at two of the major credit ratings agencies falls to BBB- (Baa3), no dividends shall be paid, except for contractual tax payments, until otherwise ordered by the Commission or EPE's credit rating at one of the major credit rating agencies returns to BBB (Baa2), at which point the above provisions of subclause (b) apply.
- d. If EPE's credit rating at one of the major credit rating agencies falls below BBB- (Baa3), no dividends shall be paid, except for contractual tax payments, until otherwise ordered by the Commission or EPE's credit rating returns to BBB- (Baa3), at which point the above provisions of subclause (c) apply.

28. Equity Ratio and Dividends. EPE will suspend payment of dividends or other distributions, except for contractual tax payments, until otherwise allowed by the Commission if issuance of the dividend or distributions, except for contractual tax payments, would cause the equity ratio of EPE's total capital for ratemaking purposes to fall below that established from time to time by the Commission for EPE ratemaking

- purposes. EPE will make a quarterly compliance filing with the Commission regarding this commitment.
29. Net Income and Dividends. EPE will limit its payment of dividends, except for contractual tax payments, to an amount not to exceed its net income (as determined in accordance with GAAP and excluding the impact of the Palo Verde Nuclear Decommissioning Trust).
30. Dividend Policy. Any amendments to the dividend policy shall be approved by a majority of the EPE Board of Directors, including at least a majority of the Disinterested Directors.
31. Holding Company. In connection with the Transaction, IIF US 2 has created Sun Jupiter, an indirect, wholly-owned special-purpose entity, to hold 100% of the equity interests in EPE.
32. Holding Company Existence. Sun Jupiter will be retained between EPE and IIF US 2 for so long as IIF US 2 owns EPE.
33. No Debt/Credit Guarantees. EPE will not guarantee the debt or credit instruments of Sun Jupiter, IIF US 2, or any other affiliate (excluding EPE and Rio Grande Resources Trust II).
34. No Pledging of Assets/Stock. EPE's assets, revenues, or stock shall not be pledged by Sun Jupiter, IIF US 2, or any of its affiliates or subsidiaries, for the benefit of any entity other than EPE.
35. No Inter-Company Debt. Neither EPE nor Sun Jupiter will enter into any inter-company debt transactions with IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II) post-closing of the Transaction, unless approved by the Commission.
36. No Inter-Company Lending. Neither EPE nor Sun Jupiter will lend money to or borrow money from IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II) post-closing of the Transaction. Further, Sun Jupiter and EPE will not borrow money from J.P. Morgan Chase & Co. ("JP Morgan") and its affiliates except that EPE may borrow from JP Morgan or any of its affiliates on an arm's-length basis if approved by a majority of the EPE Board of Directors excluding the IIF US 2 representatives on the EPE Board of Directors, and provided further that

nothing herein shall obligate JP Morgan or any of its affiliates to lend money to EPE or any of its affiliates at any time.

37. Credit Facility. Neither EPE nor Sun Jupiter will be borrowers under a common credit facility with one another nor with JP Morgan and its affiliates, IIF US 2, or any of IIF US 2's affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
38. Cross-Default Provisions. EPE will not include in any of its debt or credit agreements cross-default provisions relating to Sun Jupiter or IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II). Neither EPE nor Sun Jupiter will include in any of its debt or credit agreements cross-default provisions relating to the securities of IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II). Under no circumstances will any debt of EPE become due and payable or otherwise be rendered in default because of any cross-default or similar provisions of any debt or other agreement of IIF US 2, the Sun Jupiter Entities, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II).
39. Financial Covenants or Rating Agency Triggers. EPE's debt or credit agreements will not include any financial covenants or rating-agency triggers related to Sun Jupiter or IIF US 2 or any of IIF US 2's affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II), nor will Sun Jupiter's debt or credit agreements include any financial covenants or rating-agency triggers related to IIF US 2 or any of its affiliates or subsidiaries (excluding EPE and Rio Grande Resources Trust II).
40. No Transaction-Related Debt at EPE. EPE will not incur, guaranty, or pledge assets for any new incremental debt related to the Transaction.
41. Debt at Sun Jupiter Holdings LLC. Without prior approval of the Commission, Sun Jupiter Holdings LLC will not incur any third-party debt in excess of the amount in place at the closing of the Transaction, which shall not exceed \$700 million. Further,

all third-party debt held at Sun Jupiter Holdings LLC will be extinguished within five (5) years of closing.

42. Bankruptcy Expenses and Liabilities. Neither EPE nor Sun Jupiter will seek to recover from EPE's customers any costs incurred as a result of a bankruptcy of IIF US 2 or any of its affiliates (excluding EPE and Rio Grande Resources Trust II).
43. EPE Senior Management. Following closing of the Transaction, EPE's CEO and other senior management who directly report to the CEO will hold no positions with IIF US 2 or any of its affiliates or subsidiaries (excluding EPE).
44. Non-Consolidation Legal Opinion. IIF US 2 will obtain a non-consolidation legal opinion that provides that, in the event of a bankruptcy of IIF US 2, Sun Jupiter, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II), a bankruptcy court would not consolidate the assets and liabilities of EPE with IIF US 2, Sun Jupiter, or any of their affiliates (excluding EPE and Rio Grande Resources Trust II).
45. Affiliate Asset Transfer. Neither EPE nor Sun Jupiter will transfer any material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis consistent with the Commission and New Mexico Public Regulation Commission ("NMPRC") affiliate standards as applicable to EPE.
46. Arm's-Length Relationship. Each of EPE and Sun Jupiter will maintain an arm's-length relationship with one another and with IIF US 2 and its affiliates, consistent with the Commission and NMPRC affiliate standards as applicable to EPE.
47. Access to Books and Records. IIF US 2 will provide the Commission access to its books and records, as well as those of its applicable affiliates, as necessary to facilitate the Commission's audit or review of any affiliate transactions, if any, as between EPE and IIF US 2 or IIF US 2's affiliates in accordance with PURA § 14.154.
48. Separate Books and Records. Each of EPE and Sun Jupiter will maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and

other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.

49. Representations to the Public. Sun Jupiter and its affiliates will not represent to the public or creditors that EPE has any liability for the obligations of Sun Jupiter or IIF US 2 or any of their affiliates (except for EPE and Rio Grande Resources Trust II).
50. Consolidated Tax Return. EPE will be a party to a consolidated corporate tax return with the Sun Jupiter consolidated tax group, which will be carried out subject to a formal tax sharing agreement and policy.
51. Modification of Ring Fence. EPE, Sun Jupiter, and IIF US 2 acknowledge the Commission's jurisdiction to initiate a future proceeding to modify the EPE ring fence, but they reserve their rights to contest any other aspect of the filing. No party to this proceeding has waived any argument regarding whether the EPE ring fence should be modified or the scope of any modification, and all parties reserve their rights to argue their positions in the future docket, if such docket is initiated.

Local Control and Management Commitments

52. Headquarters. EPE's existing headquarters will remain in El Paso, Texas for so long as IIF US 2 owns EPE.
53. Continued Ownership. IIF US 2 will maintain a controlling ownership interest in EPE for at least ten (10) years post-closing.
54. Management Day-to-Day Control. EPE's CEO and EPE's senior management will continue to have day-to-day control over EPE's operations and senior management will continue to reside in the El Paso, Texas and Las Cruces, New Mexico vicinity.
55. Management Primary Point of Contact. EPE's local management will remain the primary point of contact for all regulatory, operational, and community engagement matters.
56. EPE Board/Competitive Affiliates. At the closing of the Transaction and thereafter, EPE will have a Board of Directors that will not include any employees of any IIF US 2 competitive affiliates (as that term is defined in Commission rules) in Texas, any members from the boards of directors of any IIF US 2 competitive affiliates in Texas,

or any individuals with direct responsibility for the management or strategies of any such competitive affiliates.

Powers of the EPE Directors

57. Board Composition. EPE's post-closing Board of Directors will comprise ten (10) directors, of which:

- One (1) will be EPE's CEO;
- Up to two (2) will be IIF US 2-level representatives (members of the Infrastructure Investments Group); and
- The remaining seven (7) will satisfy the definition of NYSE Independent Directors. No Independent Director shall be a then-current officer of any IIF subsidiary. Of the seven (7) NYSE Independent Directors:
 - At least four (4) will be "Disinterested;"²
 - At least two (2) will reside within EPE's service territory; and
 - At least two (2) will be individuals that either served on the EPE Board of Directors immediately prior to closing of the Transaction, are local business/community leaders, or are from a university within EPE's service territory.

58. Disinterested Director Appointment. The initial Disinterested Directors will be identified in a compliance filing made by EPE within 30 days after closing of the Transaction. After establishment of EPE's initial post-closing Board of Directors, the

² Disinterested Directors will be independent from IIF US 2 and its subsidiaries and affiliated entities (other than EPE and Rio Grande Resources Trust II) and JP Morgan, and will have no material financial relationship with IIF US 2 or its subsidiaries or affiliated entities (other than EPE and Rio Grande Resources Trust II) or JP Morgan currently or within the previous five years. A personal banking relationship of the type that is generally available to other similarly situated clients is not a material financial relationship.

Disinterested Directors will be appointed by a majority of a committee comprised of the Disinterested Directors.

59. Disinterested Director Initial Term. The initial terms of the Disinterested Directors will be staggered such that in each year no more than two Disinterested Directors will be up for renewal.
60. Disinterested Director Removal. A Disinterested Director may only be removed by majority vote of the remaining Disinterested Directors and cannot be removed by a shareholder vote.
61. EPE Director Compensation/Financial Performance. The compensation of EPE directors will in no manner be tied to, reflect, or be related to the financial, operating, or other performance of any entity or interest other than EPE.
62. EPE Director Compensation/Powers of the Board. The EPE Board of Directors shall have the power to set the compensation and benefits for EPE directors, in the form and manner it directs, subject to the approval of Sun Jupiter.
63. New Mexico Board Meeting. EPE Board of Directors meetings will take place in Las Cruces, New Mexico at least once per year.

Additional Capital Commitments

64. Approval of EPE Budgets. A majority of EPE directors, including at least one IIF US 2-level representative and four Independent/Disinterested Directors must approve any capital or any expense budget (whether a one-year budget or a multi-year budget or forecast). The prior year's budget will remain in effect until a new budget can be adopted in accordance with the foregoing.
65. Variances in EPE Budget. If EPE management seeks approval of a capital project or a series of projects that would be in excess of the approved annual budget by more than 10%, such projects or series of projects must be approved by a majority of the EPE Board of Directors, including at least one IIF US 2-level representative and four Independent/Disinterested Directors. Any budget or forecast outside this threshold will also be identified in an annual report to the Commission and EPE will provide the reasons for the variance.
66. Equity/Debt Issuances. The volumes and types of all EPE equity and debt issuances will be determined by a vote of the EPE Board of Directors including majorities of both

the entire EPE Board of Directors and of its Independent and Disinterested Directors. No Sun Jupiter Entity³ will have the power to alter or override such votes.

67. Third-Party Equity Issuances. The General Partner of IIF US 2 will have the power to decline to make provision for such equity issuances as the EPE Board of Directors approves. In the event that IIF US 2 declines to provide equity for a project that (a) EPE management has recommended, (b) the EPE Board has determined is in keeping with Good Utility Practice, and (c) such project is approved by a majority of the EPE Board of Directors, EPE is authorized to issue non-voting, non-convertible preferred equity at then prevailing market terms solely to secure the equity portion of a capital project. EPE shall not sell a primary issuance of preferred equity to IIF US 2, JP Morgan, or any of their respective affiliates.

Employment Commitments

68. Workforce. For at least five (5) years post-closing, as a result of the Transaction, EPE will not implement any material involuntary workforce reductions or changes to wages, benefits, and other terms and conditions of employment in effect prior to the Transaction.
69. Existing Collective Bargaining Agreements. EPE will honor the terms of EPE's existing collective bargaining agreements.
70. Collective Bargaining Negotiations. EPE will enter into good faith bargaining with its represented employees during and after the term of the existing collective bargaining agreements in order to negotiate new bargaining agreements.
71. Responsible Contractor Policy. EPE will adhere to a Responsible Contractor Policy.
72. EPE Officer, Manager, and Employee Compensation. The compensation of EPE officers, managers, and employees will in no manner be tied to, reflect, or be related to

³ The Sun Jupiter Entities consist of the entities between EPE and IIF US 2.

the financial, operating, or other performance of any entity other than EPE and Rio Grande Resources Trust II.

Code of Conduct

73. Code of Conduct. EPE will file with the Commission for authority to amend and update its code of conduct to incorporate all applicable conditions and limitations on affiliate transactions required by these Regulatory Commitments.
74. Arm's Length Relationship with JP Morgan. EPE and Sun Jupiter will maintain arm's-length relationships with all affiliates and with all persons, entities, and interests directly or indirectly owned or controlled by JP Morgan. Joint Applicants agree to apply the Commission's regulations regarding arm's-length transactions among affiliates to JP Morgan regardless of whether JP Morgan is an actual affiliate as defined under PURA. Nothing in the foregoing is intended to prohibit IIF US 2's management of Sun Jupiter, which is a member managed entity.

Other Commitments

75. FERC Preemption. Neither EPE nor IIF US 2 nor IIF US 2's affiliates will assert before the Commission or a Texas court of competent jurisdiction that the Commission is preempted pursuant to the Federal Power Act (e.g., under a Federal Energy Regulatory Commission ("FERC") tariff) from making a determination regarding the cost recovery of affiliate costs sought to be allocated to EPE.
76. Compliance Reports. For a period of five (5) years after the closing of the Transaction, EPE will make annual reports to the Commission regarding its compliance with the terms stated in the order approving the Transaction.
77. Reports of SAIDI and SAIFI to Commission. EPE will report its actual system-level SAIDI and SAIFI statistics to the Commission in its annual Service Quality Reports filed pursuant to 16 Tex. Admin. Code § 25.81, as may be amended.
78. Modification of Commission Order. If EPE, Sun Jupiter, or IIF US 2 seeks any modification to the final order entered in Docket No. 49849 prior to five (5) years after the date of its issuance, then in any such proceeding, Commission Staff may hire independent consultants selected by the Commission and paid for by EPE, Sun Jupiter, or IIF US 2. EPE, Sun Jupiter, or IIF US 2 will timely pay the reasonable costs of the services of such consultants as determined by the Commission. The amount that EPE,

Sun Jupiter, and IIF US 2 will be responsible to pay will not exceed \$300,000 per proceeding. EPE, Sun Jupiter, and IIF US 2 agree that EPE will not seek recovery of these costs in its rates.

79. Texas Utility. EPE will continue to operate in the State of Texas as a public utility subject to the continuing jurisdiction of the Commission.

80. Duration of Regulatory Commitments. Unless explicitly stated otherwise in these Regulatory Commitments, all of the Regulatory Commitments will apply as of closing of the Transaction and continue to apply thereafter, unless and until modified by the Commission.

II.

The Signatories agree that the terms of this Stipulation are fair, reasonable, and in the public interest. The Signatories further stipulate to the facts contained in the Proposed Order attached hereto as Attachment A and will take all reasonable efforts to obtain the prompt adoption of an order by the Commission consistent with Attachment A. The Signatories further agree to support and defend the terms of this Stipulation as set forth herein.

III.

This Stipulation has been drafted by all Signatories and is the result of negotiation, compromise, settlement, and accommodation. The Signatories agree that the terms and conditions herein are interdependent. The various provisions of this Stipulation are not severable. None of the provisions of this Stipulation shall become fully operative unless the Commission shall have entered a final order approving this Stipulation consistent with the Proposed Order. If the Commission does not accept this Stipulation as presented, or issues an order inconsistent with the terms of this Stipulation or the Proposed Order, the Signatories agree that any Signatory adversely affected by that alteration has the right to withdraw from this Stipulation, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under the law. The right to withdraw must be exercised by providing the other Signatories written notice within twenty (20) days of the date the Commission order acting on this Stipulation is filed. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the changes to this Stipulation made by the Commission.

IV.

This Stipulation is binding on each of the Signatories only for the purpose of settling the issues as set forth herein and for no other purposes. The matters resolved herein are resolved on the basis of a compromise and settlement. Except to the extent that this Stipulation expressly governs a Signatory's rights and obligations for future periods, this Stipulation shall not be binding or precedential on a Signatory outside of this proceeding except for a proceeding to enforce the terms of this Stipulation. The Signatories agree that a Signatory's support of the resolution of this docket in accordance with this Stipulation may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forum. Because this is a Stipulation, a Signatory is under no obligation to take the same position as set out in this Stipulation in other proceedings not referenced in this Stipulation whether those dockets present the same or a different set of circumstances. Notwithstanding any other provision herein, a Signatory's agreement to entry of a final order of the Commission consistent with this Stipulation should not be regarded as an agreement to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Stipulation.

V.

This Stipulation contains the entire agreement among the Signatories. Moreover, this Stipulation supersedes all other written and oral exchanges or negotiations among the Signatories or their representatives with regard to the subjects contained herein. The Signatories hereby waive the right to an evidentiary hearing in this proceeding and waive cross-examination of all witnesses.

VI.

Each person executing this Stipulation represents that he or she is authorized to sign this Stipulation on behalf of the party represented. Facsimile or emailed copies of signatures are valid for purposes of evidencing this Stipulation, which may be executed in multiple counterparts.

VII.

WHEREFORE, PREMISES CONSIDERED, the Signatories respectfully request that this Honorable Commission enter an order consistent with the terms of this Stipulation.

EL PASO ELECTRIC COMPANY

By: _____

Name:

Title:

SUN JUPITER HOLDINGS LLC AND IIF US HOLDING 2 LP

By: _____

Name:

Title:

STAFF OF THE PUBLIC UTILITY COMMISSION OF TEXAS

By: _____

Name:

Title:

OFFICE OF PUBLIC UTILITY COUNSEL

By: _____

Name:

Title:

TEXAS INDUSTRIAL ENERGY CONSUMERS

By: _____

Name:

Title:

CITY OF EL PASO

By: _____

Name:

Title:

FREEPORT-MCMORAN, INC.

By: _____

Name:

Title:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 960

By: _____

Name:

Title:

VINTON STEEL, LLC

By: _____

Name:

Title:

**UNITED STATES DEPARTMENT OF DEFENSE & ALL OTHER FEDERAL
EXECUTIVE AGENCIES**

By: _____

Name:

Title:

PROPOSED

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 16090, WHICH GRANTED A FRANCHISE TO EL PASO ELECTRIC COMPANY, (AS AMENDED BY ORDINANCES NO. 17460 AND 18772, EACH OF WHICH INCREASED THE STREET RENTAL CHARGE) TO REMOVE THE RESTRICTION ON THE ADDITIONAL FEE, AND PROVIDE FOR ADDITIONAL CONSIDERATION TO THE CITY OF EL PASO AS A CONDITION OF THE PROPOSED TRANSACTION.

WHEREAS, the City Council of the City of El Paso, Texas, (“City”) granted to El Paso Electric Company (“Company”) a franchise to operate the electric utility for transmission and distribution of electrical energy within the boundaries of the City on July 12, 2005, by Ordinance No. 16090;

WHEREAS, the City and Company amended Ordinance No. 16090 to increase the street rental charge on November 16, 2010, and again on March 20, 2018; and

WHEREAS, Sun Jupiter, IIF US Holding 2 LP (“**IIF US 2**”), and EPE filed the Joint Report and Application of EPE, Sun Jupiter, and IIF US 2 for Regulatory Approvals under Texas Utilities Code §§ 14.101, 39.262, and 39.915 with the Public Utility Commission of Texas (“**PUCT**”) on August 13, 2019, (“**Joint Application**”) seeking the PUCT’s approval of the Agreement and Plan of Merger (“**Merger Agreement**”) by and among EPE, Sun Jupiter, and Sun Merger Sub Inc. dated as of June 1, 2019, and assigned PUCT Docket No. 49849 (“**Proposed Transaction**”);

WHEREAS, the City wishes to remove the restriction on the use of the Additional Fee by the City;

WHEREAS, as consideration to the City for the Joint Application and Proposed Transaction, the parties agree that Sun Jupiter, IIF US 2 and EPE will provide additional compensation and assurances to City as provided herein (referred to collectively with the removal of the Additional Fee Restriction as “**Franchise Amendment**”).

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, THAT:

SECTION 1.

Section 1.5 is hereby added to read as follows:

Section 1.5 Conditions of Grant.

- (a) Company must accept the Franchise Amendment within thirty days of the adoption of this Ordinance.
- (b) Final Stipulation in PUCT Docket No. 49849. The Parties will use best efforts to obtain

PROPOSED

- prompt adoption of a final order by the PUCT approving the Joint Application consistent with the terms of this Agreement.
- (c) Sun Jupiter agrees that it will not relocate jobs outside of the EPE service territory and will not reduce EPE's workforce as a result of the Proposed Transaction. Furthermore, EPE will maintain sufficient employment levels as required to furnish EPE's customers with safe, adequate, efficient, and reasonable electric service.
 - (d) Sun Jupiter will never move EPE's headquarters outside the City of El Paso.

SECTION 2.

Subsection (b) of Section 13, Compensation, of the Franchise Ordinance, is hereby amended to read as follows:

(b) The City will increase the Street Rental Charge to be paid by the Company to the City on a quarterly basis during the remaining life of this Franchise by an additional three quarters of one percent (0.75%) effective 2010 ("Additional Fee") and a supplemental one percent (1.0%) ("Auxiliary Fee") for a total amount of (i) five percent (5.0%) of the gross revenues the Company receives for the generation, transmission, and distribution of electrical energy and other services within the City and (ii) five and three quarters percent (5.75%) of BPL-related gross revenues within the City of El Paso, except however for any revenues from municipal accounts to the extent that any such revenues are excepted from the Company's Rate Schedule 94, Supplemental Franchise Fee Rider. A portion of the Street Rental Charge equal to one and three quarters of one percent (1.75%) of the gross revenues the Company receives for the generation, transmission, and distribution of electrical energy and other services, including BPL services, within the City shall be allocated by the City for promotion of economic development, including economic development incentives for new commercial customers with high electric energy needs, the attraction of companies that will make significant investments of capital and human resources in the community, solar or other renewable energy rebates or incentives, or to increase the City's capacity in alternative energy research, development, manufacturing and generation, and for such other economic development public purposes including infrastructure as reasonably determined by the City (the "Economic Development Allocation"). After July 29, 2030, the Economic Development Allocation will be reduced to one percent (1.00%). The Economic Development Allocation will be placed in a restricted fund to be used solely for the economic development purposes described herein and cannot be commingled with existing Street Rental Charges to support or supplement general fund operations. The City will provide an annual update on the status, uses, and economic impact of Economic Development Allocation to the City Council and the public.

The Company shall pay the Street Rental Charge to the City by electronic funds transfer or by other means of immediately available funds within forty-five (45) days of the end of each calendar quarter (the "Payment Date"). If the Street Rental Charge or any portion thereof is not paid on or before the Payment Date, the unpaid

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balance shall bear interest at a daily rate equivalent to the prime rate of interest as published by the Wall Street Journal for that date, plus one percent (1%) per annum from the Payment Date until the date such payment is made. If any payment shall be more than thirty (30) days late, the interest shall be paid at such prime rate plus three percent (3%) per annum.

SECTION 3.

Section 13 Compensation, of the Franchise Ordinance, is hereby amended to add the following:

- (d) **Economic Development Fund:**
 - (1) Eighty million dollars (\$80,000,000) of the Economic Development Fund will be jurisdictionally allocated to Company's Texas service territory and held in a restricted account for the purpose of promoting economic development in Company's Texas service territory ("**Texas Economic Development Fund**").
 - (2) Company will fund the Texas Economic Development Fund through fifteen (15) equal annual installments of five million three hundred thirty-three thousand three hundred thirty-three dollars and 33/100 cents (\$5,333,333.33). Contributions to the Texas Economic Development Fund will be due by the 15th day of December of each year, with the first of the fifteen (15) installments to be due by the first December 15th to occur after the close of the Proposed Transaction.
 - (3) The City's Economic Development Department will administer the Texas Economic Development Fund through an economic development policy to be developed by the City of El Paso and approved by Company within six (6) months after the close of the Proposed Transaction ("**Incentive Policy**").
 - (4) The City will make reports, at least annually, to the Company's Board of Directors regarding the activities and uses of the Texas Economic Development Fund.
 - (5) The City's Economic Development Department will make reasonable efforts to coordinate with other state and local agencies within EPE's Texas service territory regarding the uses of the Texas Economic Development Fund.
 - (6) If the City eliminates the Economic Development Department or the Incentive Policy, the City and Company will find a replacement entity to administer the balance, if any, of the Texas Economic Development Fund
- (e) **General Fund Payments.** In addition to the franchise fees currently due to the City of El Paso under the Franchise Agreement, Sun Jupiter agrees to pay the City of El Paso for use in its general fund seven hundred fifty thousand dollars (\$750,000) per year for a period of ten (10) years. The first payment shall be made no later

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than thirty (30) days after the close of the Proposed Transaction by electronic funds transfer as designated by the City of El Paso. Each remaining annual payment will be made on or before the 30th day of June of each corresponding year.

(f) Renewable Generation Study.

- (1) Within one year after the close of the Proposed Transaction, EPE will complete a study concerning renewable generation, as defined in Texas Utilities Code § 39.904(d) (“**Renewable Generation Study**”). EPE will share the results of the Renewable Generation Study with the City of El Paso within thirty (30) days of the Renewable Generation Study’s completion. Should EPE not be able to complete the study within one year, EPE may request additional time to complete the Renewable Generation Study from the City of El Paso, and the City of El Paso shall not unreasonably withhold its consent to the extension.
- (2) The Renewable Generation Study will cover, but is not limited to, the following topics:
 - i. Possible costs and operational impacts related to the integration of utility-scale renewable generation into EPE’s Texas service territory;
 - ii. Legislative or regulatory changes, if any, that may be required to increase utility-scale renewable generation in EPE’s Texas service territory and the legislative strategies necessary to implement such legislative or regulatory changes;
 - iii. Potential voluntary renewable generation program offerings to allow customers to increase their use of renewable resources within the El Paso, Texas, city limits and EPE’s Texas service territory;
 - iv. Reasonable commitments that EPE can make to increase the integration of renewable generation in EPE’s Texas generation portfolio; and
 - v. Grant opportunities for EPE, the City of El Paso, or both to increase the integration of renewable generation in EPE’s Texas generation portfolio.
- (3) EPE shall designate material contained in the Renewable Generation Study as confidential to the extent that it relates to critical infrastructure, as that phrase is understood in Texas Government Code § 418.181, or to the extent that it contains sensitive information that would not be subject to public release under the Texas Public Information Act, as codified in chapter 552 of the Texas Government Code. The City of El Paso will use its best efforts to not publicly distribute such designated material to parties outside of the City El Paso. The

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City of El Paso will also provide EPE with notice of an open records request implicating such material so that EPE may assert its rights under the Texas Public Information Act.

- (g) City Expenses Related to Docket No. 49849. Company will pay the City two hundred thousand dollars and 00/100 cents (\$200,000) for the City's reasonable consultants and attorneys fees incurred due to the City's intervention in Docket No. 49849 ("**City Public Interest Fees**") no later than thirty (30) days after the later of (1) the close of the Proposed Transaction or (2) Company's receipt of invoices supporting the City Public Interest Fees.
- (h) Land Use. Company will coordinate with the City's Engineer within 6 months after the close of the Proposed Transaction of to identify:
 - (1) Land under the control EPE that the City of El Paso desires to utilize for public recreation, exercise, relaxation, travel, or pleasure in accordance with Section 75.0022 of the Texas Civil Practice and Remedies Code and;
 - (2) Poles, lines, conduits, or other construction that EPE maintains that may need to be installed or relocated in accordance with Section 3 of the Franchise Agreement.

SECTION 4.

That Section 17 is replaced in its entirety with the following:

Section 17. City's Future Purchase Option.

(a) In the event Sun Jupiter decides to consider a sale of one hundred percent (100%) of its equity interests in, or all of the assets and liabilities of, EPE ("**Sale Transaction**"), Sun Jupiter shall first provide notice to the City of El Paso ("**City**") of the potential Sale Transaction (a "**Potential Sale Notice**"). The City will use best efforts to protect information related to a Sale Transaction from public disclosure consistent with the exceptions in chapter 552 of the Texas Government Code, including, Texas Government Code § 552.110.

(b) Within ninety (90) days of receipt by the City of a Potential Sale Notice, the City will either (i) make a bona fide binding offer to purchase EPE or all the assets and liabilities of EPE ("**Offer**") or (ii) provide a waiver of the right to make an Offer. The City's Offer, if made, shall remain open for at least thirty (30) days during which time Sun Jupiter will consider the City's Offer in good faith.

(c) If the City waives the right to make an Offer or if Sun Jupiter does not accept the Offer, Sun Jupiter shall provide a written acknowledgement that (i) Sun Jupiter has provided the City notice of the potential sale and (ii) either, as the case may be, (A) the City waived the right to make an Offer or (B) the City made an Offer and Sun Jupiter did

PROPOSED

not accept such Offer (“**Acknowledgment**”). Sun Jupiter may enter into a definitive agreement with a third party for a Sale Transaction if Sun Jupiter reasonably determines such third party’s offer contains terms and conditions that, on the whole, are more favorable to Sun Jupiter than those contained in the Offer, if made.

SECTION 5. That Section 18 is added to read as follows:

Section 18. City’s Rights to Application Process. The City does not waive any rights with respect to franchise assignment as set forth in El Paso City Code § 15.08.013; or Section 14(b) of Ordinance No, 16090 provided, however, that the City shall not unreasonably withhold any required consent to the assignment of the franchise to a third party following Sun Jupiter’s compliance with this provision

SECTION 6. This ordinance shall take effect on _____, 2020.

SECTION 7. Except as expressly amended herein, the Franchise Ordinance shall continue in full force and effect.

PASSED AND APPROVED this ____ day of _____, 2020.

CITY OF EL PASO

Dee Margo, Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Karla M. Nieman
City Attorney

APPROVED AS TO CONTENT:

Tomás González
City Manager

PROPOSED

ACCEPTANCE

The Amendment of the Franchise granted by the City of El Paso on _____, 2020, is hereby accepted this ____ day of _____, 2020.

EL PASO ELECTRIC COMPANY

By: _____
Adrian J. Rodriguez
Interim Chief Executive Officer

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me this ____ day of _____, 2020, by _____, **Chief Executive Officer of El Paso Electric Company**, a Texas corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

Received for filing this ____ day of _____, 2020.

Laura D. Prine
City Clerk